UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,983	08/21/2003	Clifford Hannel	I004-P03079US	1148

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EXAMINER
BENOIT, ESTHER

ART UNIT	PAPER NUMBER
2442	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _21 August 2003_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-45_ is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1-45_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on _21 August 2003_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All   b) ☐ Some * c) ☐ None of:
        1. ☐ Certified copies of the priority documents have been received.
        2. ☐ Certified copies of the priority documents have been received in Application No. _____.
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _11/26/2003, 12/20/2004, 4/13/2006, 12/15/2006, 9/23/2008_.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

1.   This Action is in response to the application filed on August 21, 2003. A

Preliminary Amendment was filed on March 10, 2009. Claims 1-5, and 35 have been

amended. Claims 1-45 are pending in this application.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claims 1-45 are rejected under 35 U.S.C. 102(e) as being anticipated by

Gerrevink et al. (US 2003/0012141 A1).

With respect to claim 1, Gerrevink discloses:

- coupling a device to the communications network, the device comprising a

   chassis and one or more adapter cards, the adapter cards comprising

   hardware and software ([0031] and [0035], *traffic stream generator*)

- the device setting up for simulation of a realistic mix of network traffic on the communications network ([0031] and [0035], *simulating a traffic mix*)

- the device simulating the realistic mix of network traffic on the communications network ([0031] and [0035], *simulating a traffic mix*)

- the device setting up for engaging in transactions with the system under test ([0037] and [0067], *different traffic classes*)

- the device engaging in transactions with the system under test concurrently with the step of simulating the realistic mix of network traffic on the communications network, wherein the transactions result in additional network traffic on the communications network ([0037] and [0067], *simulating realistic network traffic and generating different traffic classes*)

- the device measuring performance of the system under test under load of the transactions, and the network traffic on the communications network including the simulated network traffic from the device ([0037], [0067], and [0075], *making real-time measurements*)

With respect to independent claims 15, 21, and 27, the limitations of these claims are similar to the limitations of claim 1. Therefore, claims 15, 21, and 27 are rejected for the same reasons as claim 1 above. Please see rejection above.

With respect to claim 2, Gerrevink discloses the system under test comprises an application, the application operative on a server, the application for providing user-level interaction with plural client computers on the communications network the providing step comprises providing the server and the application operative thereon ([0031] and [0035])

With respect to claim 3, Gerrevink discloses the system under test comprises a server load balancer ([0077])

With respect to claim 4, Gerrevink discloses the system under test comprises a stateful network communications device (Figure 1)

With respect to claim 5, Gerrevink discloses the performance of the system under test is characterized by how the server supports the simulated network traffic ([0031] and [0035])

With respect to claims 6 and 28, Gerrevink discloses the simulated network traffic is generated by a stateless packet processor (Figure 1)

With respect to claims 7, 29, and 38, Gerrevink discloses the system under test comprises a stateful application which uses underlying services of TCP ([0031])

With respect to claims 8, 30, and 39, Gerrevink discloses the system under test comprises an HTTP server ([0078])

With respect to claims 9, 31, and 40, Gerrevink discloses the system under test comprises an FTP server ([0078])

With respect to claims 10, 23, and 41, Gerrevink discloses modifying a behavior of the network traffic simulated by the device continuing to engage in transactions with the system under test continuing to measure performance of the system under test ([0037], [0067], and [0075])

With respect to claims 11, 18, 24, 32, and 42, Gerrevink discloses using performance metrics to modify the behavior of the simulated network traffic to more closely simulate a realistic mix of network traffic ([0031])

With respect to claims 12, 19, 25, 33, and 43, Gerrevink discloses the performance metrics are selected from the group consisting of retransmission rate, fragmentation, packet sizes, and drop/reset rates ([0018])

With respect to claims 13, 34, and 44, Gerrevink discloses a user using a control program to change the behavior of the simulated network traffic via a system interface ([0031], [0067], and [0075])

With respect to claims 14 and 45, Gerrevink discloses the user managing multiple ports in a coordinated fashion ([0031], [0067], and [0075])

With respect to claims 16 and 22, Gerrevink discloses the adapter cards include a stateless packet processor for simulating the realistic mix of network traffic on the communications network (Figure 1)

With respect to claim 17, Gerrevink discloses hardware and software for modifying a behavior of the simulated network traffic (Figure 3, *350*)

With respect to claims 20 and 26, Gerrevink discloses hardware and software for changing a behavior of the simulated network traffic in response to user instructions (Figure 3, *350*)

With respect to claim 35, Gerrevink discloses simulating real-world network traffic on the communications network generating interactive transactions across the communications network with the system under test measuring performance of the system under test in supporting the interactive transactions from the second means despite the simulated traffic on the communication network from the first means changing quantity and quality of the network traffic simulated by the first means wherein the steps of simulating, generating and measuring are performed concurrently ([0037], [0067], and [0075], *simulating realistic network traffic and generating different traffic classes* to make *real-time measurements*)

With respect to claim 36, Gerrevink discloses the performance of the system under test is characterized by how the simulated network traffic is supported ([0031])

With respect to claim 37, Gerrevink discloses the simulated network traffic is generated by a stateless packet processor (Figure 1)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-

3807. The examiner can normally be reached on Monday through Friday between 7:30

a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B.
January 11, 2010

/Shawki S Ismail/
Primary Examiner, Art Unit 2455